

CHAPTER 46

DOMESTIC SUPPORT OPERATIONS

FY 2005 SENIOR OFFICER LEGAL ORIENTATION COURSE

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**MAJ FRANK VILA
FY 2005**

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FY 2005 SENIOR OFFICER LEGAL ORIENTATION

DOMESTIC SUPPORT OPERATIONS

I. REFERENCES

- A. Posse Comitatus Act, 18 U.S.C. § 1385
- B. Military Support For Civilian Law Enforcement Agencies, 10 U.S.C. §§ 371-382
- C. Insurrections, 10 U.S.C. §§ 331-334
- D. Stafford Act, 42 U.S.C. § 5121, et seq., as amended
- E. Drug Interdiction and Counter-Drug Activities, 32 U.S.C. § 112
- F. Response to Threats of Terrorist Use of Weapons of Mass Destruction, 50 U.S.C. § 2311
- G. National Defense Authorization Act for Fiscal Year 1991, P.L. 101-510, Section 1004, as amended, Additional Support for Counter-Drug Activities
- H. National Defense Authorization Act for Fiscal Year 1997, P.L. 104-201, Section 1031, as amended, Authority to Provide Additional Support for Counter-Drug Activities of Mexico
- I. National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85, Section 1033, Authority to provide Additional Support for Counter-Drug Activities of Peru and Colombia
- J. National Security Strategy for Homeland Security, Office of Homeland Security, July 2002
- K. Homeland Security Act of 2002, Pub. L. No. 107-296 (2002)
- L. U.S. DEP'T OF DEFENSE, GARDEN PLOT
- M. U.S. DEP'T OF DEFENSE, DIR. 3025.15, MILITARY ASSISTANCE TO CIVIL AUTHORITIES (18 February 1997)
- N. U.S. DEP'T OF DEFENSE, DIR. 5525.5, DoD COOPERATION WITH CIVILIAN LAW ENFORCEMENT (15 January 1986 incorporating change one, 20 December 1989)
- O. U.S. DEP'T OF DEFENSE, DIR. 5210.56, USE OF DEADLY FORCE AND THE CARRYING OF FIREARMS BY DoD PERSONNEL ENGAGED IN LAW ENFORCEMENT AND SECURITY DUTIES (1 November 2001 incorporating change one, January 24, 2002)
- P. U.S. DEP'T OF DEFENSE, INSTR. 5525.10, USING MILITARY WORKING DOG TEAMS TO SUPPORT LAW ENFORCEMENT AGENCIES IN COUNTERDRUG MISSIONS (17 September 1990)
- Q. U.S. DEP'T OF DEFENSE, DIR. 3025.12, MILITARY ASSISTANCE FOR CIVIL DISTURBANCE (MACDIS) (4 February 1994)
- R. U.S. DEP'T OF DEFENSE, DIR. 3025.1, MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA) (15 January 1993)
- S. U.S. DEP'T OF DEFENSE, DIR. 3025.1M, MANUAL FOR CIVIL EMERGENCIES (June 1994)
- T. CHAIRMAN JOINT CHIEFS OF STAFF, INSTR. 3710.01A, DoD COUNTERDRUG SUPPORT (30 March 2004)
- U. U.S. DEP'T OF ARMY, REG. 190-14, CARRYING OF FIREARMS AND USE OF FORCE FOR LAW ENFORCEMENT AND SECURITY DUTIES (12 March 1993)
- V. U.S. DEP'T OF ARMY, REG. 500-51, SUPPORT TO CIVILIAN LAW ENFORCEMENT (1 August 1983)

- W. U.S. DEP'T OF ARMY, REG. 700-131, LOAN AND LEASE OF ARMY MATERIAL (23 August 2004)
- X. U.S. DEP'T OF ARMY, FIELD MANUAL 3-07, STABILITY OPERATIONS AND SUPPORT OPERATIONS (February 2003)
- Y. U.S. DEP'T OF ARMY, FIELD MANUAL 100-19, DOMESTIC SUPPORT OPERATIONS (July 1993)
- Z. U.S. NATIONAL GUARD BUREAU, REG. 500-1/ANGI 10-8101, MILITARY SUPPORT TO CIVIL AUTHORITIES (February 1996)
- AA. U.S. NATIONAL GUARD BUREAU, REG. 500-2/ANGI 10-801, NATIONAL GUARD COUNTERDRUG SUPPORT (31 March 2000)
- BB. U.S. DEP'T OF NAVY, SECNAV INSTR. 5820.7B, COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS (28 March 1998)
- CC. U.S. DEP'T OF NAVY, OPNAV INSTR. 3440.1C, NAVY CIVIL EMERGENCY MANAGEMENT PROGRAM (10 March 1995)
- DD. U.S. DEP'T OF AIR FORCE, AFI 10-801, AIR FORCE ASSISTANCE TO CIVILIAN LAW ENFORCEMENT AGENCIES (15 April 1994)
- EE. U.S. DEP'T OF AIR FORCE, AFI 10-802, MILITARY SUPPORT TO CIVIL AUTHORITIES (19 April 2002)
- FF. U.S. DEP'T OF AIR FORCE, AFI 31-202, MILITARY WORKING DOG PROGRAM (1 August 1999)
- GG. INT'L & OPERATIONAL LAW , THE JUDE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2005)

II. OBJECTIVES

- A. Become familiar with DoD's role in domestic operations.
- B. Become familiar with the Posse Comitatus Act.
- C. Become familiar with DoD's authority to assist in disasters and emergencies.
- D. Become familiar with DoD's authority to assist in civil disturbances.
- E. Become familiar with DoD's authority to assist in providing support to law enforcement.

III. HOMELAND SECURITY

- A. Since 11 September 2001, the role of the military in domestic operations has changed dramatically. Prior to 11 September, military involvement in domestic operations was almost exclusively in the area of civil support operations. Post-11 September, the military's role has expanded to cover "homeland defense" and/or "homeland security" missions, terms often mistakenly used interchangeably.

1. The Quadrennial Defense Review Report (September 30, 2001) (*available at* <http://www.defenselink.mil/pubs/qdr2001.pdf>) “restores the defense of the United States as the Department’s primary mission.” How this national security mission interacts with the traditional framework for the civil support mission is unclear.
2. “Homeland security (HLS)” is defined in The National Strategy for Homeland Security (July 2002) (*available at* http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf) as “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.” Clearly the focus is on acts of terrorism and responses thereto. The document does not break the mission of “homeland security” down further. However, then-Army Secretary Thomas E. White testified before Congress that the DoD “homeland security” mission breaks down into two functions: homeland defense and civil support. (*available at* http://www.defenselink.mil/news/Oct2001/n10262001_200110262.html).
- a) “Homeland defense (HLD)” is not defined in the National Strategy for Homeland Security. However, DoD defines it as a concerted national effort to prevent terrorist attacks within the United States, reduce the vulnerability of the United States to terrorism, and minimize the damage and assist in the recovery from terrorist attacks. (Statement of Dr. Stephen Cambone, Principal Deputy Under Secretary of Defense for Policy, *On the Relationship Between Department of Defense and a Department of Homeland Security*, before the House Armed Services Committee, United States House of Representative, June 26, 2002, *available at* <http://www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/02-06-26cambone.html>). It is generally considered to consist of war-fighting missions led by the Department of Defense. Examples include combat air patrols and maritime defense operations.
- b) “Civil support (CS)” is also not defined in the National Strategy for Homeland Security, but DoD defines it at its support to civil authorities for domestic emergencies and other designated activities. Examples include disaster response, counterdrug support, and support to civilian law enforcement. (Army Modernization Plan 2003, p. G-2, citing Department of Defense, (U) *Defense Planning Guidance* (S), May 2002, p. 19).

3. The challenge in today's environment is determining which type of mission the military is being asked to perform. The type of mission, HLD or CS, dictates the applicable legal structure, to include: rules of engagement/rules for use of force; applicability of statutory restrictions, such as the Posse Comitatus Act; chain of command and authority levels; and funding sources.

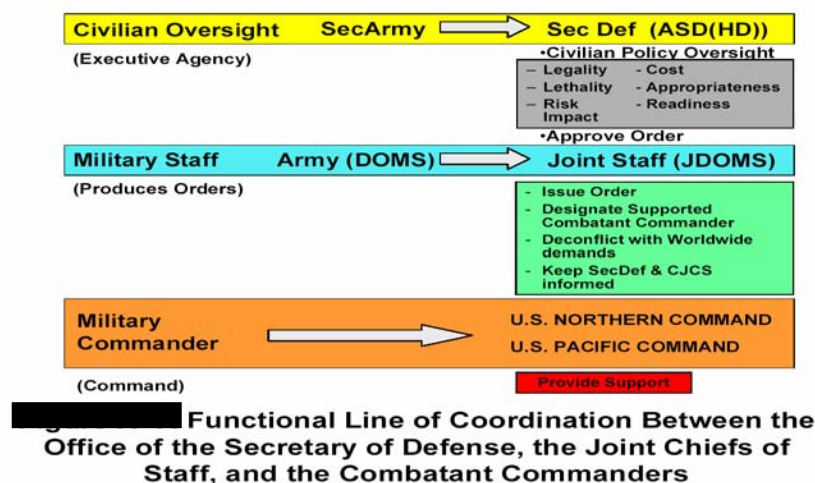
B. Homeland Security Act of 2002.

1. This Act establishes the Department of Homeland Security in the executive branch of the United States government and defines its primary missions and responsibilities. The primary missions of the Department include preventing terrorist attacks within the United States, reducing the vulnerability of the United States to terrorism at home, and minimizing the damage and assisting in the recovery from any attacks that may occur. The Department's primary responsibilities correspond to the five major functions established by the bill within the Department: information analysis and infrastructure protection; chemical, biological, radiological, nuclear, and related countermeasures; border and transportation security; emergency preparedness and response; and coordination with other parts of the federal government, with state and local governments, and with the private sector. These primary missions and responsibilities are not exhaustive, and the Department will continue to carry out other functions of the agencies it will absorb.
2. Section 876 of this Act recognizes the Department of Defense's lead role in the conduct of traditional military missions by providing that "[n]othing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United states, or other military activities." (Section 876, Homeland Security Act, *available at* http://www.dhs.gov/interweb/assetlibrary/hr_5005_enr.pdf).

C. FY 2003 National Defense Authorization Act, Public Law 107-314.

1. Section 902, FY 2003 National Defense Authorization Act directed the establishment of an Assistant Secretary of Defense for Homeland Defense. The principal duty of this position is the "overall supervision of the homeland defense activities of the Department of Defense." (Section 902, National Defense Authorization Act, *available at* <http://www.defenselink.mil/dodgc/lrs/docs/PL107-314.pdf>).

2. National Implementation Guidance Regarding the Office of the Assistant Secretary of Defense for Homeland Defense (25 March 2003) (Appendix A). Appoints an Assistant Secretary of Defense for Homeland Defense (ASD(HD)) whose principal duty is the overall supervision of the HLD activities of the DoD. The ASD(HD) serves as the DoD Domestic Crisis Manager. Secretary of the Army is therefore no longer the DoD executive agent under DoDDs 3025.1 and 3025.15, and 10 U.S.C. § 2564. The functions and resources of the Office of the Director of Military Support (DOMS) are transferred to CJCS with policy oversight by ASD(HD). (Appendix B; *see also* Transfer of the Army Director of the Military Support to the Joint Staff, 141916z May 03, *available at* http://www.au.af.mil/au/awc/awcgate/dod/transfer_of_doms.rtf) The below diagram illustrates the changes articulated in the aforementioned documents.



IV. POSSE COMITATUS ACT

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both. 18 U.S.C. § 1385.

A. History.

1. posse comitatus *po.si komitei.tAs, -tius*, [med. (Anglo) L., force of the county: see prec. and county.] ‘The force of the county’; the body of men above the age of fifteen in a county (exclusive of peers, clergymen, and infirm persons), whom the sheriff may summon or ‘raise’ to repress a riot

or for other purposes; also, a body of men actually so raised and commanded by the sheriff. *Oxford English Dictionary Online*.

2. In the United States the military was used extensively as a posse comitatus to enforce various laws as diverse as the Fugitive Slave Law and the Reconstruction eras laws. Throughout time, the authority level necessary for local law enforcement to call on the military as a posse comitatus devolved down to the lowest level.
3. For several reasons (the Army's increasingly vocal objection to "commandeering of its troops," Southerners' complaints that the Northern-based federal military was unfairly enforcing laws against them, and compromises made as a result of the most recent presidential election), Congress sought to terminate the prevalent use of federal soldiers in civilian law enforcement roles.
4. Congress therefore passed the PCA in 1878 as a rider to an Army appropriations act, limiting the circumstances under which the Army could be used as a posse comitatus to "execute the laws."

B. To Whom the PCA Applies.

1. Active duty personnel in the Army and Air Force.
 - a) Most courts interpreting the Posse Comitatus Act have refused to extend its terms to the Navy and Marine Corps. (United States v. Yunis, 924 F.2d 1086 (D.C. Cir. 1991); United States v. Roberts, 779 F.2d 565 (9th Cir. 1986), *cert. denied*, 479 U.S. 839 (1986); United States v. Mendoza-Cecelia, 736 F.2d. 1467 (11th Cir. 1992); United States v. Acosta-Cartegena, 128 F. Supp 2d. 69 (D.P.R. 2000)).
 - b) In 10 U.S.C. § 375, Congress directed SECDEF to promulgate regulations forbidding direct participation "by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity." SECDEF has done so in DoDD 5525.5. Therefore, the proscription has been extended by regulation to the Navy and Marine Corps. (DoDD 5525.5). SECDEF and SECNAV may grant exceptions on a case-by-case basis. (DoDD 5525.5, Encl. 4, SECNAVINST 5820.7b, para. 9c.).
2. Reservists on active duty, active duty for training, or inactive duty for training.

3. National Guard personnel in Federal service (Title 10 status).
4. Civilian employees of DoD when under the direct command and control of a military officer. (DoDD 5525.5, para. E4.2.3; AR 500-51, para. 3-2; SECNAVINST 5820.7B, para. 9b(3)).

C. The Whom the PCA does NOT Apply.

1. A member of a military service when off duty and acting in a private capacity. [A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities]. (DoDD 5525.5, Encl. 4; AR 500-51 para. 3.2; SECNAVINST 5820.7B, para. 9b(4); AFI 10-801).
2. A member of the National Guard when not in Federal Service.
3. A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.
4. Members of the Coast Guard (14 U.S.C. § 2). Jackson v. Alaska, 572 P.2d 87 (Alaska 1977).
5. Members who are not a “part of the Army or Air Force.” In a 1970 Department of Justice opinion, then-Assistant Attorney General William Rehnquist addressed the assignment of Army personnel to the Department of Transportation to act as U.S. Marshals. He determined that this was not a violation of the PCA as: (1) a statute (49 U.S.C. § 1657) expressly authorized the detailing of military members to DOT; (2) under the statute the assigned members were not charged against statutory limits on grade or end strength; and (3) the members were not subject to direct or indirect command of their military department of any officer thereof. He determined, therefore, that they were DOT employees for the duration of the detail. Therefore they were not “part of the Army or Air Force.” (Memorandum for Benjamin Forman, Assistant General Counsel, Department of Defense, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: Legality of deputizing military personnel assigned to the Department of Transportation (Sept. 30, 1970) (“Transportation Opinion”).

D. To What the PCA Applies.

1. When determining what actions are covered by the PCA, i.e., what constitutes “execut[ing] the law” under the statute, you must consider

both directive and case law, as they are not identical. In fact, case law prohibits a much broader range of activities as “execut[ing] the law.” Some of these issues have been addressed in various service Judge Advocate General opinions, but some instances simply will require you to apply the court tests described.

2. By directive and regulation.

a) Prohibits direct law enforcement assistance, including:

- (1) Interdiction of a vehicle, vessel, aircraft, or other similar activity;
- (2) A search or seizure;
- (3) An arrest, apprehension, stop and frisk, or similar activity; and
- (4) Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. (DoDD 5525.5, para. E4.1.3.).

3. By case law.

a) Analytical framework. There are three separate tests courts apply to determine whether the use of military personnel has violated the PCA. See United States v. Kahn, 35 F.3d 426 (9th Cir. 1994); United States v. Hitchcock, 103 F.Supp 2d. 1226 (D. Haw. 1999).

- (1) FIRST TEST: whether the action of the military personnel was “active” or “passive.” United States v. Red Feather, 392 F. Supp. 916, 921 (W.D.S.D 1975); United States v. Yunis, 681 F. Supp. 891, 892 (D.D.C. 1988); United States v. Rasheed, 802 F.Supp. 312 (D. Haw. 1992).
- (2) SECOND TEST: whether use of the armed forces pervaded the activities of civilian law enforcement officials. United States v. Hartley, 678 F.2d 961, 978 (11th Cir. 1982) *cert. den.* 459 U.S. 1170 (1983); United States v. Hartley, 796 F.2d 112 (5th Cir. 1986); United States v. Bacon, 851 F.2d 1312 (11th Cir. 1988); Hayes v. Hawes, 921 F.2d 100 (7th Cir. 1990).

- (3) THIRD TEST: whether the military personnel subjected citizens to the exercise of military power which was:
 - (a) Regulatory (a power regulatory in nature is one which controls or directs);
 - (b) Proscriptive (a power proscriptive in nature is one that prohibits or condemns); or
 - (c) Compulsory (a power compulsory in nature is one that exerts some coercive force). United States v. McArthur, 419 F. Supp. 186 (D.N.D. 1975); United States v. Casper, 541 F.2d 1274 (8th Cir. 1976), *cert. denied*, 30 U.S. 970 (1977). United States v. Yunis, 681 F. Supp. 891, 895-6 (D.D.C. 1988); United States v. Kahn, 35 F.3d 426 (9th Cir. 1994).

4. Military Purpose Activities (DoDD 5525.5, para. E4.1.2.1.). The PCA does NOT apply to actions furthering a military or foreign affairs function of the United States. This is sometimes known as the “Military Purpose Doctrine.” The primary purpose must be to further a military interest. The civilians may receive an incidental benefit. Such military purposes include:
 - (1) Investigations and other actions related to enforcement of the UCMJ. United States v. Thompson, 33 M.J. 218 (CMA 1991), *cert. denied*. 502 U.S. 1074 (1992). (E4.1.2.1.1.)
 - (2) Investigations and other actions that are likely to result in administrative proceedings by DoD, regardless of whether there is a related civil or criminal proceeding. (E4.1.2.1.2.)
 - (3) Investigations and other actions related to the commander’s inherent authority to maintain law and order on a military installation or facility. Harker v. State, 663 P.2d 932 (Alaska 1983); Anchorage v. King, 754 P.2d 283 (Alaska Ct. App. 1988); Eggleston v. Department of Revenue, 895 P.2d 1169 (Colo. App 1995). Civilians may be detained for an on-base violation long enough to determine whether the civilian authorities are interested in assuming the prosecution. Applewhite v. United States, 995 F.2d 997

(10th Cir. 1993), *cert. denied*, 510 U.S. 1190 (1994).
(E4.1.2.1.3.)

- (4) Protection of classified military information or equipment.
(E4.1.2.1.4.)
- (5) Protection of DoD personnel, DoD equipment, and official guests of the DoD. United States v. Chon, 210 F.3d 990 (9th Cir. 2000), *cert. denied*, 531 U.S. 910 (2000) (NCIS investigation of civilians undertaken for independent purpose of recovering military equipment was permissible).
(E4.1.2.1.5.)
- (6) Such other actions that are undertaken primarily for a military or foreign affairs purpose. (E4.1.2.1.6.)

E. Where the PCA Applies - Extraterritorial Effect of the PCA.

- 1. A 1989 Department of Justice Office of Legal Counsel opinion concluded that the Posse Comitatus Act does not have extraterritorial application. (Memorandum, Office Legal Counsel for General Brent Scowcroft, 3 Nov. 1989). This opinion also states the restrictions of 10 U.S.C. §§ 371 - 381, specifically 10 U.S.C. § 375, were also not intended to have extraterritorial effect.
- 2. Some courts have also adopted the view that the Posse Comitatus Act imposes no restriction on use of U.S. armed forces abroad, noting that Congress intended to preclude military intervention in domestic affairs. United States v. Cotton, 471 F.2d 744 (9th Cir. 1973); Chandler v. United States, 171 F.2d 921 (1st Cir. 1948), *cert. denied*, 336 U.S. 918 (1949); D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951), *cert. denied*, 343 U.S. 935 (1952); United States v. Marcos, No. SSSS 87 Cr. 598, 1990 U.S. Dist. LEXIS 2049 (S.D.N.Y. Feb. 28, 1990). (Note: both Chandler and D'Aquino involved law enforcement in an area of military occupation.) But see, United States v. Kahn, 35 F.3d 426, 431 n. 6 (9th Cir. 1994) (In a case involving the applicability of the PCA to Navy activities in support of maritime interdiction of a drug-smuggling ship, the government maintained the PCA had no extraterritorial effect. While the court stated that issue had not been definitively resolved, it did state that 10 U.S.C. §§ 371-381 did "impose limits on the use of American armed forces abroad.")

3. Note, however, that DoD policy, as contained in DoDD 5525.5, which incorporates restrictions of 10 U.S.C. § 375, applies to all U.S. forces wherever they may be. Two weeks after the promulgation of the DOJ memo, Secretary Cheney amended the Directive to read that, in the case of compelling and extraordinary circumstances, SECDEF may consider exceptions to the prohibition against direct military assistance with regard to military actions outside the territorial jurisdiction of the U.S. (DoDD 5525.5, para. 8.2.).

F. What is the effect of violating the PCA.

1. Criminal Sanctions. 2 years imprisonment, fine, or both.
2. Note that to date, no direct action has been brought for violation of the PCA. The issue of the PCA has arisen instead as a “collateral” issue, whether as a defense to a charge by a criminal defendant (see Padilla v. Bush, 233 F. Supp. 2d 564 (S.D.N.Y. 2002); United States v. Red Feather, 392 F. Supp. 916 (W.D.S.D. 1975)), or in support of an argument for exclusion of evidence. Perhaps the question of more interest to the military member is what effect violation of the PCA would have on a state criminal case brought against a military member. For example, if a military member shot and killed a U.S. civilian in the course of a HLS mission, if the state charged the member with murder and determined that the military member was “execut[ing] the law” (i.e. searching or seizing an individual) in violation of the PCA, would he therefore be acting outside the scope of his authority and lose protection from state prosecution.
3. Inability to Convict Offenders.
 - a) Exclusionary rule. In general, courts have not applied the exclusionary rule to cases in which the PCA was violated, using the following rationales:
 - (1) The PCA is itself a criminal statute, so there is no need to use the deterrent of the exclusionary rule. However, since there have been no prosecutions under the PCA, its deterrent effect is questionable. State v. Pattioay, 896 P.2d 911 (Hawaii 1995); Colorado v. Tyler, 854 P.2d 1366 (Colo. Ct. App. 1993), *rev’d on other grounds*, 874 P.2d 1037 (Colo. 1994); Taylor v. State, 645 P.2d 522 (Okla. 1982).

- (2) The PCA is designed to protect the rights of all civilians, not the personal rights of the defendant. United States v. Walden, 490 F.2d 372 (4th Cir. 1974), *cert. denied* 416 U.S. 983 (1974).
 - (3) Violations of the PCA are neither widespread nor repeated, so the remedy of the exclusionary rule is not needed. Court will apply the exclusionary rule when the need to deter future violations is demonstrated. United States v. Roberts, 779 F.2d 565 (9th Cir. 1986), *cert. denied* 479 U.S. 839 (1986); United States v. Wolffs, 594 F.2d 77 (5th Cir. 1979); United States v. Thompson, 30 M.J. 570 (A.F.C.M.R. 1990).
- b) Failure to prove an element of offense. Where the offense requires that law enforcement officials act lawfully, violation of the PCA would negate that element. United States v. Banks, 383 F. Supp. 368 (1974).
4. Dismissal of charges. Not likely to be considered an appropriate remedy. United States v. Rasheed, 802 F. Supp 312 (D. Haw. 1992); United States v. Hitchcock, 103 F. Supp 2d. 1226 (D. Haw. 1999).
5. Civil Liability.
 - a) PCA violation as a private cause of action. No. PCA is a criminal statute; Congress did not intend to create a private cause of action. Robinson v. Overseas Military Sales Corp., 21 F. 3d 502, 511 (2nd Cir. 1994) *citing* Lamont v. Haig, 539 F. Supp. 552 (W.D.S.D. 1982).
 - b) PCA violation as a constitutional tort (“Bivens suit”). An evolving area. Applewhite v. United States Air Force, 995 F.2d. 997 (10th Cir. 1993), *cert. denied*, 510 U.S. 1190 (1994)(finding PCA not violated, and conduct of military personnel did not otherwise violate 4th or 5th Amendment rights); Bissonette v. Haig, 800 F.2d 812 (8th Cir. 1986), *aff’d*, 485 U.S. 264 (1988)(finding a private right of action under the 4th Amendment).
 - c) Federal Tort Claims Act. Military personnel acting in violation of the PCA may not be found to be acting “within the scope of their employment,” and therefore may be subject to individual personal liability. Wrynn v. U.S., 200 F. Supp. 457 (E.D.N.Y. 1961).

V. CIVIL SUPPORT

- A. Note that the memo referenced above, “Implementation Guidance Regarding the Office of the Assistant Secretary of Defense for Homeland Defense” (Appendix A) directs the Assistant Secretary of Defense for Homeland Defense to “update and streamline” DoDDs 3025.15, 3025.1, and 3025.12, and “other related issuances.” There is no specific deadline for these changes. **Therefore before relying on the below information, you MUST check to ensure you have the most current version of the directive you are using.**
- B. It is DoD’s policy that DoD shall cooperate with and provide military assistance to civil authorities as directed by and consistent with applicable law, Presidential Directives, Executive Orders, and DoDD 3025.15. Assistance is generally one of support—the civilian authorities retain primary responsibility.
- C. DoDD 3025.15.
 - 1. This directive establishes DoD’s policy and assigns responsibilities for providing military assistance to civil authorities.
 - 2. The directive governs all DoD military assistance provided to civil authorities within the 50 States, District of Columbia, Puerto Rico, U.S. possessions and territories, including:
 - a) Sensitive support requests under DoDD S-5210.36;
 - b) **Civil Disturbances under DoDD 3025.12;**
 - c) Protection of key assets under DoDD 5160.54;
 - d) **DoD responses to civil emergencies under DoDD 3025.1;**
 - e) Acts or threats of terrorism under DoDD 2000.12; and
 - f) **Requests for aid to civil law enforcement authorities under DoDD 5525.5.**
 - 3. DoDD 3025.15 provides criteria against which all requests for support shall be evaluated. The directive addresses them to approval authorities, but commanders at all levels should use them in providing a recommendation up the chain of command.

- a) Legality - compliance with the law.
 - b) Lethality - potential use of lethal force by or against DoD forces.
 - c) Risk - safety of DoD forces.
 - d) Cost - who pays, impact on DoD budget.
 - e) Appropriateness - whether the requested mission is in the interest of DoD to conduct.
 - f) Readiness - impact on DoD's ability to perform its primary mission.
4. Approval Authority. DoDD 3025.15 changes the approval authority, in certain cases, from that set forth in older directives, but the older directives have not been changed and are otherwise applicable. For this reason, this directive should always be the first one consulted.
- a) Although the directive states the "Secretary of the Army is the approval authority for emergency support in response to natural or man-made disasters," this responsibility has been transferred to the JDOMS. (Appendix B).
 - b) SECDEF is the approval authority for:
 - (1) Civil Disturbances. (DoDD 3025.15, para. 4.4.).
 - (2) Responses to acts of terrorism. (DoDD 3025.15, para. 4.4.).
 - (3) Support that will result in a planned event with the potential for confrontation with specifically identified individuals or groups, or which will result in the use of lethal force. (DoDD 3025.15, para. 4.4.).
 - c) Loan of Equipment, Facilities, or Personnel to Law Enforcement. (DoDD 3025.15, para. 4.7.2.).
 - (1) Requests shall be made and approved IAW DoDD 5525.5, but at a level no lower than a flag or general officer, or equivalent civilian, with the following exceptions:

- (a) SECDEF is approval authority for any requests for potentially lethal support.
 - (b) SECDEF is approval authority for all assistance with the potential for confrontation between DoD personnel and civilian individuals or groups.
 - d) Support for Civil Disasters. Follow DoDD 3025.1 and Appendix A and B.
- 5. When Combatant Command assigned forces are to be used, there must be coordination with the Chairman of the Joint Chiefs of Staff. CJCS will determine whether there is a significant issue requiring SECDEF approval, after coordination with the affected Combatant Command. (DoDD 3025.15, para. 4.5.).
- D. Immediate response authority (DoDD 3025.1, paragraph 4.5) in the local commander is not affected. This is discussed in greater detail below.

VI. SUPPORT TO CIVILIAN LAW ENFORCEMENT

- A. Although the following activities can be considered law enforcement type activities, they do not violate the PCA as they do not involve use of military personnel to provide direct assistance. In addition, many of them are statutorily directed, and therefore could be considered an “exception” to the PCA.
- B. This section is broken down into three functional areas of support: loan of equipment and facilities; expert advice and training; and sharing information. Material otherwise not covered in one of these three areas can be found in DoDD 5525.5.
- C. Loan of Equipment and Facilities.
 - 1. Key References.
 - a) Law. 10 U.S.C. §§ 372 and 374.
 - b) DoD.
 - (1) DoDD 5525.5.
 - (2) DoDD 3025.15.

- c) Services.
 - (1) AR 500-51, Chapter 2, Section 2.
 - (2) SECNAVINST 5820.7B, para. 8.
 - (3) AFI 10-801, Attachment 4.
- 2. With proper approval, DoD activities may make equipment (including associated supplies and spare parts), base facilities, or research facilities available to Federal, State, or local law enforcement officials for law enforcement purposes.
- 3. There must be no adverse impact on national security or military preparedness.
- 4. Approval authority.
 - a) Requests for loans of equipment, facilities, or personnel made by law enforcement agencies, including the Coast Guard when not acting as part of the Navy, shall be made and approved in accordance with DoDD 5525.5, but at a level no lower than a flag or general officer, or equivalent civilian, with the exceptions discussed in the next paragraph.
 - b) SECDEF. Request for assistance with the potential for confrontation between DoD personnel and civilian individual groups. And, any requests for potentially lethal support, including loans of:
 - (1) Arms.
 - (2) Combat and tactical vehicles, vessels, or aircraft.
 - (3) Ammunition. (DoDD 3025.15, para. 4.7.2.1. and 4.7.2.3.).
 - c) Army:
 - (1) HQDA (DALO-SMS). Non-lethal equipment in excess of 60 days. Installation Commander can approve all other equipment requests if loan/lease is for 60 days or less. (AR 500-51, para. 2-5).

- (2) HQDA (DAMO-ODS). Requests for use of installation or research facilities. (AR 500-51, para. 2-5).
 - d) Navy & Marines: Assistant SECNAV (Manpower and Reserve Affairs) for non-lethal equipment for more than 60 days. All other requests may be approved as specified in SECNAVINST 5820.7B, para. 9e(3).
 - e) Air Force: Ass't SECAF for Manpower, Reserve Affairs, Installations, and Environment for all nondrug related requests. See AFI 10-801, Attachment 4.
 - f) National Guard: Loan of weapons, combat/tactical vehicles, vessels and aircraft require approval of the service secretary or their designee. Requests for loan/lease of NG equipment which require HQDA or HQAF approval will be reviewed by NGB. NGB 500-1/ANGI 10-8101, para. 3-1.
5. In addition to loan/lease authority, The National Defense Authorization Act of 1997 added a new section to Title 10. Section 2576a, "Excess Personal Property; Sale or Donation for law enforcement activities," permits DoD to provide excess personal property suitable for use in counter-drug and counter-terrorism activities to federal and state agencies.
- a) This includes authority to furnish small arms and ammunition.
 - b) The Defense Logistic Agency manages this program as of 1 October 1995. (Memorandum of the Secretary of Defense for the Under Secretary of Defense for Acquisition and Technology, 26 June 1995).
 - c) The four Regional Logistics Support Offices (Buffalo, Miami, El Paso, Los Angeles) actually provide this excess property.

D. Expert Advice and Training.

1. Key References.

a) Law.

- (1) 10 U.S.C. §§ 373, 375, 377.

- (2) 50 U.S.C. §§ 2312, 2315.
 - b) DoD.
 - (1) DoDD 5525.5, Enclosure 4.
 - (2) DoDI 5525.10.
 - c) Services.
 - (1) AR 500-51, Chapter 3.
 - (2) SECNAVINST 5820.7B, para. 9.a.(4) and (5).
 - (3) AFI 10-801.
- 2. Military personnel may be used to train civilian law enforcement personnel in the use of equipment that we provide. Large scale or elaborate training programs are prohibited, as is regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations.
 - a) Note that the Deputy Secretary of Defense has provided policy guidance in this area, which limits the types of training US forces may provide. The policy is based on prudential concerns that advanced training could be misapplied or misused by civilian law enforcement agencies, resulting in death or injury to non-hostile persons. The memo permits basic military training such as basic marksmanship, patrolling, medical/combat lifesaver, mission planning, and survival skills. It prohibits what it terms “advance military training,” which is defined as “high intensity training which focuses on the tactics, techniques, and procedures (TTPs) required to apprehend, arrest, detain, search for, or seize a criminal suspect when the potential for a violent confrontation exists.” Examples of such training are sniper training, Military Operations in Urban Terrain (MOUT), Advanced MOUT, and Close Quarter Battle/Close Quarter Combat (CQB/CQC) training. (see Appendix C).
 - b) A single general exception exists to provide this advanced training at the US Army Military Police School. In addition, Commander, USSOCOM may approve this training, on an exceptional basis, by special operations forces personnel. (see Appendix C).

3. Military personnel may also be called upon to provide expert advice to civilian law enforcement personnel. However, regular or direct involvement in activities that are fundamentally civilian law enforcement operations is prohibited.
 - a) A specific example of this type of support (advice) is military working dog team (MWDT) support to civilian law enforcement. The dogs have been analogized to equipment and its handler provides expert advice. (see DoDI 5525.10, Using Military Working Dog Teams to Support Law Enforcement Agencies in Counterdrug Missions, 17 Sept. 1990; Military Working Dog Program, AFI 31-202).
 - (1) Pursuant to Section 372 of 10 U.S.C., the Secretary of Defense may make available equipment to any federal, state, or local LEAs for law enforcement purposes. So, upon request, a military working dog (MWD) (viewed by the Department of Defense as a piece of equipment) may be loaned to law enforcement officials. Moreover, MWD handlers may be made available to assist and advise law enforcement personnel in the use of the MWD under Section 373 of 10 U.S.C. If a MWD is loaned to a LEA, its military handlers will be provided to work with the particular MWD. A MWD is always loaned with its handler since they work as a team. Under compelling and exceptional circumstances, requests for exceptions may be submitted, through channels, to the DoD Drug Coordinator. (DoDDI 5525.10, para. 4.2.1.).
 - (2) In all cases, MWDT support may be provided only under circumstances that preclude any confrontation between MWDTs and civilian subjects of search.
 - b) Weapons of Mass Destruction. Congress has directed that DoD provide certain expert advice to federal, state, and local agencies with regard to weapons of mass destruction (WMD). This training is non-reimbursable because Congress has appropriated specific funds for these purposes.
 - (1) 50 U.S.C. § 2312. Training in emergency response to the use or threat of use of WMD.
 - (2) 50 U.S.C. § 2315. Program of testing and improving the response of civil agencies to biological and chemical

emergencies. Department of Energy runs the program for responses to nuclear emergencies.

4. Approval Authority.

a) SECDEF.

(1) Training or expert advice to law enforcement in which there is a potential for confrontation between the trained law enforcement and specifically identified civilian individuals or groups.

(2) Assignments of 50 or more DoD personnel or a period of assignment of more than 30 days. The Assistance Secretary of Defense (Manpower, Reserve Affairs, and Logistics) is the approval authority for any other assignment. (DoDD 5525.5, para. E4.5.3.1.).

b) Army. DOMS is the approval authority. AR 500-51, para. 3-1d.

(1) Approval authority has been granted to HQDA (DAMO-ODS) for requests for assistance by Army personnel for a period of 6 months or less in the following categories: use of Army personnel to provide training or expert advice; use of Army personnel for equipment maintenance; and use of Army personnel for monitoring and communicating the movement of air and sea traffic.

c) Navy & Marines. The Secretary of the Navy is the approval authority. SECNAVINST 5820.7B, para. 9.e.

5. Funding. Support provided under these authorities is reimbursable, unless:

a) The support is provided in the normal course of training or operations; or

b) The support results in a substantially equivalent training value.

E. Sharing Information.

1. Key References.

- a) Law. 10 U.S.C. § 371.
- b) DoD. DoDD 5525.5, Enclosure 2.
- c) Services.
 - (1) AR 500-51, Chapter 2, Section 1.
 - (2) SECNAVINST 5820.7B, para. 7.
 - (3) AFI 10-801, Chapter 4.
- 2. Military Departments and Defense Agencies are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the **normal course of military operations** that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. (DoDD 5525.5, para. E2.1).
- 3. Collection must be compatible with military training and planning. To the maximum extent practicable, the needs of civilian law enforcement officials shall be taken into account in planning and execution of military training and operations. (10 U.S.C. § 371(b)).
- 4. However, the planning and or creation of missions or training for the primary purpose of aiding civilian law enforcement officials are prohibited. (DoDD 5525.5, para. E2.1.4.).

VII. CIVIL DISTURBANCES

A. Key References:

- 1. Law.
 - a) Constitution: Article 4, Section 4: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.”
 - b) 10 U.S.C. §§ 331-335.

2. DoD.
 - a) DoDD 3025.12.
 - b) U.S. DEP'T OF DEFENSE, GARDEN PLOT.
 - c) USJFCOM Functional Plan 2502-98, Military Assistance for Civil Disturbances, 25 Jun 01.
- B. The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in the State and local government. (DoDD 3025.12, para. 4.1.3.). Involvement of military forces will only be appropriate in extraordinary circumstances. Use of the military under these authorities to conduct law enforcement activities is a specific exception to the PCA. The probable order of employment of forces in response to a certain situation will be:
 1. Local and state police.
 2. National Guard in their state status..
 3. Federal civil law enforcement officials.
 4. Federal military troops (to include National Guard called to active federal service).
- C. The insurrection statutes permit the President to use the armed forces, subject to the following circumstances:
 1. An insurrection within a State. The legislature or governor must request assistance from the President. (§ 331).
 2. A rebellion making it impracticable to enforce the laws of the United States (i.e., federal law) by the ordinary course of judicial proceedings. (§ 332).
 3. Any insurrection or domestic violence which:
 - a) opposes or obstructs federal law; or

b) hinders the execution the laws of that State, or federal laws within the state, so that the people are deprived of their Constitutional rights, and the State is unable or unwilling to protect those rights. (§ 333).

4. If the President considers it necessary to use the armed forces, he must (shall) first issue a proclamation directing the insurgents to disperse and retire peacefully. (§ 334).

D. The Federal response.

1. Responsibility for the management of the Federal response to civil disturbances rests with the Attorney General of the United States.
2. As discussed above, if the President decides to respond to the situation, he must first issue a proclamation to the insurgents, prepared by the Attorney General, directing them to disperse within a limited time. (§ 334). At the end of that time period, the President may issue an execute order directing the use of armed forces.
3. The Attorney General appoints a Senior Civilian Representative of the Attorney General (SCRAG) as his action agent.

E. The DoD Response.

1. SECDEF has reserved to himself the authority to approve support in response to civil disturbances. (DoDD 3025.15, para. 4.4.).
2. Although the civilian authorities have the primary responsibility for response to civil disturbances, military forces shall remain under military command and control at all times. (DoDD 30125.12, para. 4.2.5.).
3. GARDEN PLOT is the standing Operation Plan for response to civil disturbance. It is a comprehensive plan. Detailed Use of Force Policy / ROE is found in Appendix 1 and Appendix 8 to Annex C of this plan.

F. Emergency Employment of Military Forces. (para. 4.2.2.).

1. Military forces shall not be used for civil disturbances unless specifically directed by the President (pursuant to 10 U.S.C. §§ 331-334), except in the following circumstances:

- a) To prevent the loss of life or wanton destruction of property or to restore governmental functioning and public disorder. That “emergency authority” applies when sudden and unexpected civil disturbances occur if the duly constituted authority local authorities are unable to control the situation and circumstances preclude obtaining prior Presidential authorization. (para. 4.2.2.1.).
 - b) When duly constituted state or local authorities are unable or decline to provide adequate protection for Federal property or fundamental Federal functions, federal action is authorized, as necessary, to protect the federal property and functions. (para. 4.2.2.2.).
- 2. Note that this is limited authority.
- 3. Other Considerations. Although employment under these authorities permits direct enforcement of the law by military forces, the military’s role in law enforcement should be minimized as much as possible. Our role is to support the civilian authorities, not replace them.

VIII. DISASTER AND EMERGENCY RELIEF

A. Key References.

- 1. Law. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.
- 2. DoD. DoDD 3025.1.

B. The Stafford Act is not a statutory exception to the PCA; therefore, all missions performed during a disaster relief response must comply with the restrictions of the PCA.

C. Stafford Act. Overarching purpose of the Act is to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate suffering and damage which result from disaster. The Act provides four means by which the federal government may become involved in the relief effort:

- 1. President may declare the area a major disaster (42 U.S.C. § 5170).

- a) “Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (42 U.S.C. § 5121).
 - b) Requires a request for the declaration from the governor.
 - c) State must have executed its own emergency plan and require supplemental help.
 - d) State certifies that it will comply with cost sharing provisions under this Act.
2. President may declare the area an emergency (42 U.S.C. § 5191).
- a) “Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the US. (42 U.S.C. § 5122).
 - b) Same criteria as for a **major disaster**, except also requires that governor define the type and amount of federal aid required. Total federal assistance may not exceed \$5 million.
 - c) Operationally, no significant distinction between an emergency and a major disaster.
3. President’s 10-day Emergency Authority. President may send in DoD assets on an emergency basis to “preserve life and property.” (42 U.S.C. § 5170b(c)).
- a) “During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which

such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such **emergency work may only be carried out for a period not to exceed 10 days.**” (42 U.S.C. § 5170b(c)).

- b) Done before any Presidential declaration, but still requires a governor’s request.
 - c) Lasts only 10 days.
 - d) Used to clear debris and wreckage and to temporarily restore essential public facilities and services—very limited authority.
4. President may send in federal assets where an emergency occurs in an area over which the federal government exercises primary responsibility by virtue of the Constitution or federal statute. (42 U.S.C. § 5191(b)).
- a) Does not require a governor’s request, although the statute directs consultation with the governor, if practicable.
 - b) Results in a Presidential declaration of an emergency regarding a situation for which the primary responsibility for response rests with the U.S.
 - c) President Clinton exercised this authority on April 19, 1995 in the case of the bombing of the Murrah Federal Building in Oklahoma City, OK.

D. Types of support authorized under the Stafford Act.

- 1. Personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of relief authorized under the Act (42 U.S.C. §§ 5170a(1) and 5192(a)).
- 2. Distribution of medicine, food, and other consumable supplies, and emergency assistance. (42 U.S.C. §§ 5140a(4) and 5192(a)(7)).

3. Utilizing, lending, or donating Federal equipment, supplies, facilities, personnel, and other resources to State and local governments (42 U.S.C. §§ 5170b(a)(1) and 5192(b)).
4. Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property, public health, and safety, including –
 - a) Debris removal.
 - b) Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies and persons.
 - c) Clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services.
 - d) Provision of temporary facilities for schools and other essential community services.
 - e) Demolition of unsafe structures that endanger the public.
 - f) Warning of further risks and hazards.
 - g) Dissemination of public information and assistance regarding health and safety measures.
 - h) Provision of technical advice to state and local governments on disaster management and control.
 - i) Reduction of immediate threats to life, property, and public health and safety. (42 U.S.C. § 5170b(a)(3)).

E. The Federal Response.

1. The Federal Emergency Management Agency (FEMA) directs and coordinates the federal response on behalf of the President.
2. FEMA has prepared the *Federal Response Plan* (available at <http://www.fema.gov/pdf/rrr/frp/frp2003.pdf>), which defines 12 Emergency Support Functions (ESF's) for which certain federal agencies

have either a primary or supporting role. DoD (Corps of Engineers) is the primary agency for ESF #3, Public Works and Engineering. DoD is a supporting agency for all others.

- a) Emergency Support Function (ESF) #3 — Public Works and Engineering provides technical advice and evaluation, engineering services, contracting for construction management and inspection, contracting for the emergency repair of water and wastewater treatment facilities, potable water and ice, emergency power, and real estate support to assist the State(s) in meeting goals related to lifesaving and life-sustaining actions, damage mitigation, and recovery activities following a major disaster or emergency.
3. FEMA appoints a Federal Coordinating Officer (FCO), typically the senior FEMA official on-scene.
4. Because of the likelihood of DoD involvement, a Defense Coordinating Officer (DCO) is assigned to the FCO. The DCO, an O-6 or above, is generally drawn from the CONUSA headquarters, either 1st or 5th U.S. Army. The DCO will be the FCO's single point of contact for DoD support, and is responsible to evaluate and process Requests for Assistance and to exercise command and control of units coming into the area.
5. The FCO issues Mission Assignments, defining the task and maximum reimbursement amount, to the federal agencies. Federal agencies, which exceed the reimbursement amount, or execute tasks not within the Mission Assignment, may not be reimbursed.
 - a) Mission Assignment is a work order issued by FEMA to a Federal Agency that directs completion of a specific task. For further information on Mission Assignments, visit http://training.fema.gov/EMIWeb/downloads/is292_unit4.pdf.

F. The DoD Response.

1. DoDD 3025.1 (Military Support to Civil Authorities - MSCA) governs all planning and response by DoD Components for civil defense or other assistance to civil authorities, with the exception of military support to law enforcement operations under DoDD 3025.12 (Military Assistance for Civil Disturbance - MACDIS) and contingency war plans. (DoDD 3025.1, para 4.2).

2. MSCA Policy. MSCA shall include (but not be limited to) support similar to that described for Immediate Response (paragraph 5.4) in either civil emergencies or attacks, during any period of peace, war, or transition to war. It shall include response to civil defense agencies, **but shall not include** military assistance for civilian law enforcement operations. (para 4.4.1.).
3. NOTE: The Secretary of the Army is no longer the DoD Executive Agent for disaster relief operations. The duties and authorities associated with that assignment has been delegated to the new Assistant Secretary of Defense for Homeland Defense. (*see* Appendix B).
4. The Joint Director of Military Support (JDOMS) is the Assistant Secretary of Defense for Homeland Defense's action agent. JDOMS coordinates and monitors the DoD effort through the DCO.
5. As the combatant commanders for Homeland Security, USNORTHCOM (CONUS, Puerto Rico, and the Virgin Islands) and USPACOM (Alaska, Hawaii, and Pacific possessions and territories) are responsible for developing disaster response plan and for the execution of those plans.

G. Immediate Response Authority.(DoDD 3025.1, para 4.5).

1. "Imminently serious conditions resulting from any civil emergency or attack may require immediate action by military commanders, or by responsible officials of other DoD Agencies, to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, local military commanders and responsible officials of other DoD Components are authorized by this Directive, subject to any supplemental direction that may be provided by their DoD Component, to take necessary action to respond to requests of civil authorities. All such necessary action is referred to in this Directive as **Immediate Response**." (para 4.5.1.).
2. Types of support authorized include (see para 4.5.4. for full list):
 - a) Rescue, evacuation, and emergency treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.
 - b) Emergency restoration of essential public services (such as fire-fighting, water, communication, transportation, power and fuel).

- c) Emergency removal of debris and explosive ordnance.
 - d) Recovery and disposal of the dead.
- 3. This type of support is provided on a cost-reimbursable basis, but assistance should not be denied because the requester is unable or unwilling to commit to reimbursement. (para 4.5.2.).
- 4. NOTE: This is a very limited authority, which should only be invoked, in bona fide emergencies. Contemporaneous coordination with higher headquarters should always occur in these scenarios, and in any other case potentially involving this type of assistance to civil authorities.

H. Disaster Support Involving Law Enforcement Activities.

- 1. The Stafford Act is **not** an exception to the Posse Comitatus Act. Therefore, any support that involves direct involvement in the enforcement of the civil law must undergo the PCA analysis discussed above. Typical areas of concern include:
 - a) Directing traffic.
 - b) Guarding supply depots.
 - c) Patrolling.
- 2. National Guard personnel, acting in their Title 32 (State) status should be the force of choice in these areas.
- 3. Law enforcement duties that involve military functions may be permissible (i.e., guarding a military supply depot).

IX. COUNTERDRUG SUPPORT

A. Key References.

- 1. Law.
 - a) 10 U.S.C. § 124.
 - b) 32 U.S.C. § 112.

- c) Section 1004, FY91 NDAA.
- d) Section 1031, FY97 NDAA.
- e) Section 1033, FY98 NDAA.
- f) Public Law 107-107, Section 1021 (extends support for counter-drug activities through 2006).

2. DoD.

- a) Drug Enforcement Policy and Support (DEP&S) Policy of 26 Jan 95.
- b) CJCSI 3710.01A, 30 March 2004.
- c) NGR 500-2/ANGI 10-801.

B. General.

- 1. Counterdrug support operations have become an important activity within DoD. All DoD support is coordinated through the Office of the Defense Coordinator for Drug Enforcement Policy and Support (DEP&S), which is located within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD (SO/LIC)).
- 2. What separates counterdrug support from most other areas of support is that it is non-reimbursable. For FY03, Congress appropriated nearly \$850 million for DoD counterdrug support. DEP&S channels that money to the providers of counterdrug support.

C. Detection and Monitoring.

- 1. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency, 10 U.S.C. § 124. This statute made DoD the lead federal agency for detection and monitoring (D&M) of aerial and maritime transit of illegal drugs into the United States. D&M is therefore a DoD mission.
 - a) Although a mission, D&M is to be carried out in support of federal, state, and local law enforcement authorities.

- b) Note that the statute does not extend to D&M missions covering land transit (i.e., the Mexican border).
 - c) Interception of vessels or aircraft is permissible outside the land area of the United States to identify and direct the vessel or aircraft to a location designated by the supported civilian authorities.
2. D&M missions involve airborne (AWACs, aerostats), seaborne (primarily USN vessels), and land-based radar (to include Remote Other The Horizon Radar (ROTHR)) sites.
 3. This mission is not covered by CJCSI 3710.01A. (CJCSI 3710.01A, para 2.a.).

D. National Guard.

1. Drug interdiction and counter-drug activities, 32 U.S.C. § 112. This statute provides that SECDEF may make available federal funding for National Guard counterdrug activities, to include pay, allowances, travel expenses, and operations and maintenance expenses.
2. The State must prepare a drug interdiction and counter-drug activities plan. DEP&S reviews each State's implementation plan and disburses funds.
3. It is important to note that although the NG is performing counterdrug support operations using federal funds and under federal guidance, it remains a state militia force and is not to be considered a federal force for purposes of the PCA.
4. Although the NG is not subject to the restrictions of the PCA while not in federal services, the National Guard Bureau has imposed a number of policy restrictions on counterdrug operations. (see NGR 500-2).

E. Additional Support to Counterdrug Agencies.

1. General. Congress has given DoD additional authorities to support federal, state, local, and foreign which have counterdrug responsibilities. These are in addition to the authorities contained in 10 U.S.C. §§ 371-377 (discussed above). Congress has not chosen to codify these, however, so it is necessary to refer to the public laws instead. Many of these are reproduced in the notes following 10 U.S.C. § 374 in the annotated codes.

2. Section 1004 (see Appendix D).

- a) Section 1004 is the primary authority used for counterdrug operations. The statute permits broad support to the following law enforcement agencies which have counterdrug responsibilities:
 - (1) Federal, State, and Local.
 - (2) Foreign, when requested by a federal counterdrug agency. (Typically the DEA or member of the State Department Country Team that has counterdrug responsibilities within the country.)
- b) Types of support (see CJCSI 3710.01A, para. 3).
 - (1) Equipment maintenance.
 - (2) Transportation of personnel (U.S. & foreign), equipment, and supplies CONUS/OCONUS.
 - (3) Establishment of bases of operations CONUS/OCONUS.
 - (4) CD-related training of law enforcement personnel, to include associated support and training expenses.
 - (5) Detection and monitoring of air, sea, surface traffic outside the United States, and within 25 miles of the border if the detection occurred outside the United States.
 - (6) Engineer support (construction of roads, fences, and lights) along U.S. border.
 - (7) Linguist and intelligence analyst services.
 - (8) Aerial and ground reconnaissance.
 - (9) Establishment of command, control, communication, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

- c) These authorities are not exceptions to the Posse Comitatus Act. Any support provided must comply with the restrictions of the PCA. Additional, any domestic training provided must comply with the Deputy Secretary of Defense policy on advanced training.
- d) Approval Authorities. CJCSI 3710.01A.
 - (1) Non-Operational Support.
 - (a) That which does not involve the active participation of DoD personnel, to include the provision of equipment only, use of facilities, and formal schoolhouse training, is requested and approved in accordance with DoDD 5525.5 and implementing Service regulations, discussed above.
 - (2) Operational Support.
 - (a) The Secretary of Defense is the approval authority. The approval will typically be reflected in a CJCS-issued deployment order.
 - (b) SECDEF has delegated approval authority for certain missions to Geographic Combatant Commanders (GCC), with the ability for further delegation, but no lower than a flag officer. The delegation from SECDEF depends on the type of support provided, the number of personnel provided, and the length of the mission. See CJCSI 3710.01A. Example: For certain missions along the southwest border, the delegation runs from SECDEF to NORTHCOM to Joint Task Force SIX (JTF-6).
- e) Requests for DoD support must meet the following criteria:
 - (1) Support requested has clear counterdrug connection.
 - (2) Support request must originate with federal, state or local agency having counterdrug responsibilities.
 - (3) Request must be for support DoD authorized to provide.

- (4) Support must clearly assist with counterdrug activities of agency.
- (5) Support is consistent with DoD support of the National Drug Control Strategy.
- (6) All approved CD operational support must have military training value to the supporting unit or be consistent with the DoD policy. (see CJCSI 3710.01A, para 8b.(4)(a-f)).

3. Other Statutes.

- a) Section 1206, FY 90 NDAA. Congress directed the armed forces, to the maximum extent practicable, to conduct training exercises in declared drug interdiction areas.
- b) Section 1031, FY 97 NDAA. Congress authorized, and provided additional funding specifically for, enhanced support to Mexico. The support involves the transfer of certain non-lethal specialized equipment such as communication, radar, navigation, and photo equipment.
- c) Section 1033, FY 97 NDAA. Congress authorized, and provided additional funding specifically for, enhanced support to Colombia and Peru. The additional support is similar that provided to Mexico under Section 1031, but also includes boats suitable for riverine operations.

X. MISCELLANEOUS SUPPORT

A. Sensitive support - DoDDS-5210.36

B. Law Enforcement Detachments

- 1. Law. 10 U.S.C. § 379.
- 2. U.S. Coast Guard personnel shall be assigned to naval vessels operating in drug interdiction areas. Such personnel have law enforcement powers, and are known as Law Enforcement Detachments (LEDET's).
- 3. When approaching a contact of interest, tactical control (TACON) of the vessel shifts to the Coast Guard. As a "constructive" Coast Guard vessel,

the ship and its crew are permitted to participate in direct law enforcement. However, to the maximum extent possible, the law enforcement duties should be left to the Coast Guard personnel. Military members should offer necessary support.

C. Emergencies Involving Chemical or Biological Weapons

1. Law. 10 U.S.C. § 382.
2. In response to an emergency involving biological or chemical weapons of mass destruction, which is beyond the capabilities of the civil authorities to handle, the Attorney General may request DoD assistance directly.
3. The assistance provided includes monitoring, containing, disabling, and disposing of the weapon.
4. Regulations, required by the statute, implementing the authority, have not yet been promulgated.

D. Weapons of Mass Destruction

1. Defense Against Weapons of Mass Destruction Act (Nunn-Lugar-Domenici Act); Public Law 104-201.
2. Federal funding is provided to DoD to develop and maintain domestic terrorism rapid response teams to aid federal, state, and local officials and responders.
3. There are currently 37 response teams, composed of full time Army and Air National Guard members. These teams are federally resourced, trained, evaluated, and operating under federal doctrine. They perform their missions, however, primarily under the command and control of state governors. If the teams are federalized, they fall under the command and control of Joint Task Force, Civil Support (JTF-CS).

E. Miscellaneous Exceptions. DoDD 5525.5, para. E4.1.2.5. contains a list of statutes, which contain express authorization for the use of military forces to enforce the civil law. Among them are:

1. Protection of the President, Vice President, and other dignitaries.

2. Assistance in the case of crimes against members of Congress, foreign officials, or involving nuclear materials.

XI. APPENDICES

APPENDIX A

DEPUTY SECRETARY OF DEFENSE
101 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 25 2003

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation Guidance Regarding the Office of the Assistant Secretary of
Defense for Homeland Defense

The Honorable Paul McHale has been appointed as the first Assistant Secretary of Defense for Homeland Defense (ASD(HD)). His principal duty is the overall supervision of the homeland defense activities of the Department under the authority, direction and control of the Under Secretary of Defense for Policy (USD(P)) and, as appropriate, in coordination with the Chairman of the Joint Chiefs of Staff (CJCS). As such, he will averse HD activities, develop policies, conduct analyses, provide advice, and make recommendations on HD, support to civil authorities, emergency preparedness and domestic crisis management matters within the Department.

Specifically, the ASD(HD) will assist the Secretary in providing policy direction on HD matters through the CJCS to United States Northern Command and other Combatant Commands, as applicable, to guide the development and execution of their plans and activities. To focus the planning and execution of DoD activities and the use of resources in preventing or responding to crises, the ASD(HD) will serve as the DoD Domestic Crisis Manager. To address the complexities of the interagency environment, the ASD(HD) will represent the Department on all HD related matters with designated Lead Federal Agencies, the Executive Office of the President, the Department of Homeland Security, other Executive Departments and Federal Agencies, and state and local entities, as appropriate.

Accordingly, the interim DoD Executive Agent for Homeland Security assignment to the Secretary of the Army (SecArmy), as described in Deputy Secretary of Defense Memorandum, "Homeland Security Executive Agent," October 2, 2001, is hereby terminated. To streamline and consolidate our support to civil authorities and related activities, the DoD Executive Agent assignments for Military Support to Civil Authorities, as described in DoD Directive 3025.1, and Military Assistance for Civil Disturbances, as described in DoD Directive 3025.12, are also terminated. The duties and authorities associated with these DoD Executive agent assignments are delegated to the ASD(HD) effective today. Also effective today, the delegation of authority to oversee the management and coordination of DoD support to international and national special events, including, without limitation, events covered under 10 U.S.C. 2564, is transferred from the SecArmy to the ASD(HD).

Effective no later than May 16, 2003, the following additional transfers and transitions of delegated authority, personnel, and associated resources, as shown, are directed to focus and align the Department with regard to homeland defense.

- From the Army to the Office of ASD(HD): transfer the functions and associated resources of the Offices of the Special Assistant for Military Support -- Civilian (3), Military (2), Total (5).
- From the Army to the CJCS: transition of the functions and associated resources of the Office of the Director of Military Support (DOMS) related to support to civilian authorities and special events -- Civilian (8), Military (12), Total (20). The ASD(HD) will exercise policy oversight of the DOMS on behalf of the Secretary.
- From the USD for Personnel and Readiness to the Office of the ASD(HD): the functions and associated resources related to Military Assistance to Civil Authorities -- Civilian (2), Military (5), Total (7).
- From the ASD for Special Operations and Low Intensity Conflict to the Office of the ASD(HD): the functions and associated resources related to Territorial Security -- Civilian (7), Military (6), Total (13).

The Director of Administration and Management, in coordination with the USD(P), the USD(Comptroller), the General Counsel of the Department of Defense, and other cognizant official will take the actions necessary to implement this direction. The attachment provides additional guidance to implement these and other actions.

/s/Paul Wolfowitz

Attachment:
As stated

**Additional Implementation Guidance Regarding the Office of the
Assistant Secretary of Defense for Homeland Defense (ASD(HD))**

1. The ASD(HD), through the Under Secretary of Defense for Policy (USD)(P), shall:

1.1. Prepare transition plans, within 30 days, to effect all directed transfers and transitions as soon as possible, but no later than May 16, 2003. Coordinate the plans, as appropriate, with the Secretary of the Army, the Chairman of the Joint Chiefs of Staff (CJCS), the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller)(USD)(C), the General Counsel of the Department of Defense (GC, DoD), and the Director of Administration and Management (DA&M).

1.2. Prepare a memorandum for my approval, within 30 days, defining the domestic crisis management structure within OSD. Coordinate the memorandum with the CJCS, the under Secretaries of Defense, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (or successor organizations), the GC, DoD, and the DA&M.

1.3. Prepare a memorandum for my approval, within 30 days, defining the relationship between the ASD(HD) and the U.S. Northern Command, and other Combatant Commands as applicable. Coordinate the memorandum with the CJCS, the GC, DoD and DA&M.

1.4. Update and streamline DoD Directive 2000.15, "Support to Special Events", DoD Directive 3025.1, "military Support to Civil Authorities (MSCA)", DoD Directive 3025.12, "Military Assistance for Civil Disturbances (MACDIS)", DoD Directive 3025.15, "Military Assistance to Civil Authorities," and other related issuances, to implement this memorandum and any other required changes resulting from the establishment of the Office of the ASD(HD). Coordinate the directive in accordance with DoD 5025.1-M, "DoD Directive Systems Procedures."

2. The DA&M shall:

2.1. Develop and coordinate a chartering DoD Directive for the ASD(HD), within 45 days, for my approval, to incorporate the appropriate provisions of the memorandum. The DoD Directive shall define the relationship between the ASD(HD) and the ASD for Special Operations and Low Intensity Conflict regarding the matters of counterterrorism, antiterrorism, force protection, consequence management and counternarcotics. The DoD Directive shall also define the relationship between the ASD(HD) and the ASD for International Security Affairs (ASD(ISA)) regarding matters involving Mexico and the island nations of the Caribbean. And, the DoD Directive shall define the relationship between ASD(HD) and the ASD(ISA) regarding matters involving Canada and other NATO nations as they pertain to direct defense of the homeland.

2.2. Once the ASD(HD) chartering DoD Directive is approved, update DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P))," DoD Directive 5111.10, "Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD(SO/LIC))" and other chartering DoD Directives, as required, to implement this memorandum.

2.3. Implement other administrative, financial, personnel, information technology, and support actions necessary to establish the Office of the ASD(HD).

3. The USD(C), the USD(P), and the Director, Program Analysis and evaluation shall promulgate updated planning, programming, and budgeting system (PPBS) guidance documents, beginning with the current PPBS cycle, that reflect these organizational, functional, and personnel realignments and requirements, and that include separate guidance for DoD homeland defense matters.

APPENDIX B

Originator: JOINT STAFF WASHINGTON DC//JDOMS//

SUBJECT: **TRANSFER OF THE ARMY DIRECTOR OF MILITARY SUPPORT TO THE JOINT STAFF**

RATUZYUW RUEKJCS8003 1342206-UUUU--RUEAACS.

ZNR UUUUU

R 141916Z MAY 03

FM JOINT STAFF WASHINGTON DC//JDOMS//

BT

UNCLAS

MSGID/GENADMIN/JDOMS//

SUBJ/TRANSFER OF THE ARMY DIRECTOR OF MILITARY SUPPORT MISSION TO THE JOINT STAFF//

REF/A/DOD DIRECTIVE 3025.1/DTD 15 JAN 93/-/NOTAL//

REF/B/DOD DIRECTIVE 3025.1-M/DTD 2 JUN 94/-/NOTAL//

REF/C/DOD DIRECTIVE 3025.15/DTD 18 FEB 97/-/NOTAL//

REF/D/DOD DIRECTIVE 3025.12/DTD 4 FEB 94/-/NOTAL//

REF/E/DEPUTY SECRETARY OF DEFENSE IMPLEMENTATION MEMORANDUM/DTD 25 MAR 03/-/NOTAL//

RUEKJCS8003 UNCLAS

AMPN/REFS A-C DESIGNATE THE SECRETARY OF THE ARMY AS THE DOD EXECUTIVE AGENT FOR MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA) AND OUTLINE PROCEDURES FOR REQUESTING AND PROVIDING MSCA. REF D DESIGNATES THE SECRETARY OF THE ARMY AS THE DOD EXECUTIVE AGENT FOR MILITARY ASSISTANCE FOR CIVIL DISTURBANCES (MACDIS) AND OUTLINE PROCEDURES FOR REQUESTING AND PROVIDING MACDIS. REF E TRANSFERS THE EXECUTIVE AGENT AUTHORITY FOR MSCA AND MACDIS FROM THE SECRETARY OF THE ARMY TO THE ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE AND DIRECTS THE TRANSFER OF THE FUNCTIONS OF THE DIRECTOR OF MILITARY SUPPORT (DOMS) FROM THE DEPARTMENT OF THE ARMY TO THE JOINT STAFF.// RMKS/1. EFFECTIVE 161600Z MAY 03, THE ACTION AGENCY FOR MSCA AND MACDIS IS TRANSFERRED FROM THE DEPARTMENT OF THE ARMY DIRECTOR OF MILITARY SUPPORT (DOMS) TO THE JOINT STAFF PER REF E. CURRENT DOMS FUNCTIONS WILL BE ASSUMED BY A NEW DIVISION, JDOMS, WITHIN THE JOINT STAFF, J-3 DIRECTORATE.

2. THE TRANSFER OF THE ACTION AGENCY FOR DOMESTIC MILITARY SUPPORT FOLLOWS THE RECENT TRANSFER OF EXECUTIVE AGENCY FOR MSCA AND MACDIS FROM THE SECRETARY OF THE ARMY TO THE ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE.

3. JDOMS IS LOCATED IN THE PENTAGON, WASHINGTON DC, ROOM 1E1008.

4. CONTACT NUMBERS.

A. PHONE: 703-697-9400, DSN 227-9400.

B. FAX: 703-697-3147, DSN 227-3147.

C. AFTER HOURS DUTY PHONE: DDO IN THE NATIONAL MILITARY COMMAND CENTER, 703-693-8196, DSN 223-8196.

5. NETWORK CONNECTIONS

A. NIPRNET EMAIL: JDOMS@JS.PENTAGON.MIL

B. SIPRNET EMAIL: JDOMS@JS.PENTAGON.SMIL.MIL

6. THE JOINT STAFF POINT OF CONTACT IS CDR FRANK MORNEAU, J-3, JOD

HLS, TEL: 703-697-9444 OR 9400, DSN 697-9444 OR 9400.//
BT

APPENDIX C

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON D.C. 20301-1000

29 JUN 1996

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS-IN-CHIEF OF THE UNIFIED COMBATANT
COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: DoD Training Support to U.S. Civilian Law Enforcement Agencies

This directive-type memorandum provides the DoD policy for providing advanced military training to U.S. civilian law enforcement agencies.

It is DoD policy that no advanced military training will be provided to U.S. civilian law enforcement agency (CLEA) personnel, except as noted below. "Advanced military training," in the context of this policy, is defined as high intensity training which focuses on the tactics, techniques, and procedures (TTPs) required to apprehend, arrest, detain, search for, or seize a criminal suspect when the potential for a violent confrontation exists. "Advanced military training" includes advanced marksmanship (including sniper training), military operations in urban terrain (MOUT), advanced MOUT, close quarters battle/close quarters combat (CQB/CQC), and similar specialized training. It does not include basic military skills such as basic marksmanship, patrolling, mission planning, medical, and survival skills.

As a single general exception to this policy, the U.S. Army Military Police School is authorized to continue training CLEA personnel in the Counterdrug Special Reaction Team Course, the Counterdrug Tactical Police Operations Course, and the Counterdrug Marksman/Observer Course. Additionally, on an exceptional basis, the Commander-in-Chief, U.S. Special Operations Command (USCINCSOC) may approve such training by special operations forces. In such cases, USCINCSOC will inform the Executive Secretary to the Secretary of Defense of the training support provided. Similarly, the U.S. Army MP School will continue to report training performed in accordance with existing procedures.

Those portions of applicable DoD directives and instructions relating only to the procedures for coordination and approval of CLEA requests for DoD support are not affected by this memorandum. Those portions of such directives that address the substance of training that may be provided to CLEAs will be revised to reflect this change in policy within 90 days.

The Under Secretary of Defense for Policy will notify civilian law enforcement agencies through appropriate means of this change in policy

/s/ JOHN P. WHITE

APPENDIX D

NATIONAL DEFENSE AUTHORIZATION ACT FOR FY2002

107 P.L. 107; 115 Stat. 1012; 2001 Enacted S. 1438; 107 Enacted S. 1438

Sec. 1021. EXTENSION AND RESTATEMENT OF AUTHORITY TO PROVIDE DEPARTMENT OF DEFENSE SUPPORT FOR COUNTER-DRUG ACTIVITIES OF OTHER GOVERNMENTAL AGENCIES.

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; [10 U.S.C. 374](#) note) is amended to read as follows:

"Sec. 1004. ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES.

"(a) Support to Other Agencies.--During fiscal years 2002 through 2006, the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested--

"(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

"(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

"(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

"(b) Types of Support.--The purposes for which the Secretary of Defense may provide support under subsection (a) are the following:

"(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purposes of--

"(A) preserving the potential future utility of such equipment for the Department of Defense; and

"(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

"(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in paragraph (1) for the purpose of--

"(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

"(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

"(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

"(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities of the Department of Defense or

any Federal, State, or local law enforcement agency within or outside the United States or counter-drug activities of a foreign law enforcement agency outside the United States.

"(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

"(6) The detection, monitoring, and communication of the movement of--

"(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

"(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

"(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

"(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

"(9) The provision of linguist and intelligence analysis services.

"(10) Aerial and ground reconnaissance.

"(c) Limitation on Counter-Drug Requirements.--The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

"(d) Contract Authority.--In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

"(e) Limited Waiver of Prohibition.--Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

"(f) Conduct of Training or Operation To Aid Civilian Agencies.--In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

"(g) Relationship to Other Laws.--(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

"(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.

"(h) Congressional Notification of Facilities Projects.--(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

"(2) Paragraph (1) applies to an unspecified minor military construction project that--

"(A) is intended for the modification or repair of a Department of Defense facility for the purpose set forth in subsection (b)(4); and

"(B) has an estimated cost of more than \$ 500,000.".

APPENDIX E

TABLE 2-1, AR 700-131•23 August 2004

Table 2-1 Equipment normally executed on a reimbursable basis: agreements, bonds, and insurance requirements				
Borrower	Loan or lease agreement required	Surety bond required	Vehicular insurance required	Radioactive material license (as applicable)
Army or other DOD activities	See note (1)	No	No	Yes (5,6)
Non-DOD Federal department and agencies	Yes	No	No	Yes
Civil authorities (State and local governments)	Yes	Yes (2)	Yes (2)	Yes (7)
Civilian activities (veteran's organizations, youth groups, etc.)	Yes	Yes	Yes	Yes (7)
Commercial Corporations	Yes	Yes (3)	Yes (4)	Yes (7)

Notes:

¹ A hand receipt or other document assigning responsibility will suffice for retail activities. A loan agreement will be required for material on loan from wholesale activities.

² In emergency disaster relief cases, bonds and insurance will be provided within 5 days after receipt of the material.

³ This applies when the Federal Acquisition Regulation (FAR) Part 45 and subparts are not applicable.

⁴ The requirement for a surety bond or insurance may be waived if one or the other is in effect.

⁵ For radioactive commodities, existing Army Commodity Licenses may cover the requirement. Contact the item manager for details.

⁶ For other DOD organizations, the service or agency license will probably cover the requirement. The DOD (recipient) representative must coordinate the license information.

⁷ An NRC license or a license from an NRC approved "Agreement State" will satisfy the requirement.

APPENDIX F

TABLE 2-2, AR 700-131•23 August 2004

Table 2-2 Loan or lease approval authority				
Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
Authorized recipients (para 2-11)	Wholesale (Army Working Capital Fund) loans (nonexpendable items)	120 days/none (1-year repair program—other Services)	AMC MSC	HQAMC (AMCOPS-SLA)
All (leases)	Prototype/ developmental major items	As required	SARD-SA	ASA (ALT)
Army and other DOD activities (RDT&E)	MACOM owned	1 year/none	Installation	Installation commander
	ARNG owned	1 year/none	USPFO	State AG
	USAR owned	1 year/none	Installation	USARC MSC
	Historical property (to include military art, arms, combat/ tactical vehicles, vessels and aircraft)	2 years/2years	DAMH-MD	Chief, CMH
	Prime Power Program	1 year/1 year	HQDA (ZCM)	Asst Chief of Engineers
	Floating plant	As negotiated	Water resource support center	Asst Chief of Engineers
	COMSEC	1 year/none	USACCSLA	USACCSLA
	Wholesale equipment (no readiness/DAMPL impact)	1 year/1 year	AMC MSC	HQAMC (AMCOPS-SLA)
	Wholesale equipment (readiness/DAMPL impact)	1 year/none	AMC MSC	HQDA ODCS, G-4
Army RDT&E activities; or Army procurement agencies for use by contractor personnel or Government contractor	Wholesale equipment (no readiness/DAMPL impact)	2 years/none	AMC MSC	HQAMC (AMCOPS-SLA)
	Wholesale equipment (readiness/DAMPL impact)	2 years/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	Asst Chief of Engineers
	Floating plant	As negotiated	Water resource support center	Asst Chief of Engineers
	COMSEC	2 years/none	USACSLA	USACSLA
Federal departments and agencies (non-DOD)	All arms, combat/ tactical vehicles, vessels and aircraft (fielded equipment)	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	Asst Chief of Engineers
	Floating Plant	As negotiated	Water Resource Support Center	Asst Chief of Engineers
	Wholesale equipment (no readiness/DAMPL impact), other than arms, combat/ tactical vehicles, vessels and aircraft	1 year/1 year	AMC MSC	HQAMC (AMCOPS-SLA)
	Wholesale equipment (readiness/DAMPL impact), other than arms, combat/ tactical vehicles, vessels and aircraft	1 year/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Medical (other than combat/tactical vehicles, vessels and aircraft)	Over 180 days	DASG-LOZ	HQDA (DASG-LOZ)

Table 2-2
Loan or lease approval authority—Continued

Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
	MACOM owned, except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation
	ARNG owned, except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USPFO	State AG
	USAR owned, except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USAR MSC
Manufacturers for lease of previously produced materiel for demonstration purposes involving foreign	All equipment except prototype and nonstandard equipment	As required	ASA (ALT)	DASA (DEC)
	All prototype and non-standard equipment	As required	ASA (ALT)	ASA (ALT)
Manufacturers for lease of previously produced materiel in support of R&D initiatives within the United States	All equipment except prototype and nonstandard equipment	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
	All prototype and non-standard equipment	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Department of Agriculture:				
U.S. Forest Service	Protection against wildlife	90 days/90 days	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
	Avalanche control	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Animal Disease Eradication Program	All equipment except arms, combat/tactical vehicles, vessels and aircraft	90 days	HQDA ODCS, G-3 (DAMO-OD)	Operations and Readiness
DOJ, FBI	Aircraft piracy/all equipment except arms, combat/tactical vehicles, vessels and aircraft	Minimum essential	HQDA ODCS, G-3	DOD General Counsel or designee; in urgent cases, Deputy Director for Operations
Department of Treasury, United States Secret Service	All equipment except arms, combat/tactical vehicles, vessels and aircraft	Minimum essential	HQDA ODCS, G-3	Executive Secretary of the Department of Defense Military Assistant to the President
Civilian law enforcement:				
Civil disturbances and terrorist activities and planned events with potential for lethal force	All personnel, arms, combat/ tactical vehicles, vessels, and aircraft, even if applicable under other categories	15 days/15 days	HQDA ODCS, G-3 (DAMO-OD) through ASA (ALT)	SECDEF
	Riot control agents, concertina wire, and other equipment to be employed in control of civil disturbances	15 days/15 days	HQDA ODCS, G-3 (DAMO-OD) through ASA (ALT)	SECDEF

Table 2-2
Loan or lease approval authority—Continued

Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
	Medical (ARNG owned, other than combat/tactical vehicles, vessels and aircraft)	Fewer than 180 days	USFPO	State AG
	Medical (MACOM owned, other than combat/ tactical vehicles, vessels and aircraft)	Fewer than 180 days	Commander, U.S. Army Medical Center (MED-CEN)/ Medical Department Activity (MEDDAC)	Installation commander
	Medical (USAR owned, other combat/ vehicles, vessels and aircraft)	Fewer than 180 days	Installation	USAR MSC
	Medical (wholesale owned), other than combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	U.S. Army Medical Materiel Agency	Commander, USAMMA
	MACOM owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation commander
	Historical property (to include military art, arms, combat/ tactical vehicles, vessels and aircraft)	2 years/2 years	DAMH-MD	Chief, CMH
	USAR owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USAR MSC
	ARNG owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USFPO	State AG
National Museum	Historical property, to include military art, arms, combat/ tactical vehicles, vessels and aircraft	As required for exhibition	DAMH-MD	Chief, CMH
Activities outside Federal Government:				
State; local government agencies; schools; churches; commercial activities	All arms, combat/tactical vehicles, vessels and aircraft (fielded equipment)	As required	HQDA (DALO-SMP)	ASA (ALT)
	Medical (other than combat/tactical vehicles, vessels and aircraft)	Over 180 days	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
	Medical (MACOM owned), except arms, combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	MEDCEN MEDDAC	Installation commander
	Other equipment, wholesale (no readiness/ DAMPL impact), except arms, combat/tactical vehicles, vessels and aircraft	1 year/ 1 year	AMC MSC	HQAMC (AMCOPS-SLA)
	Other equipment, wholesale (readiness/DAMPL impact), except arms, combat/tactical, vehicles, vessels and aircraft	1 year/none	AMC MSC	HQ ODCS, G-4 (DALO-SMP)

Table 2-2
Loan or lease approval authority—Continued

Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
	Fire fighting resources and equipment of a protective nature (masks, helmets, body armor, vests) and use of Army facilities	15 days/15 days	Installation	Installation commander, State AG, Commander Military District of Washington/CG Unified Commands outside continental United States (OCONUS)/ HQAMC
Other law/drug enforcement activities	Medical, except combat/ tactical vehicles, vessels and aircraft	Over 180 days	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
	Medical (MACOM owned), except combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	Commander (MEDCEN/ MEDDAC)	Installation commander
	Medical (ARNG owned), except, combat/tactical and aircraft	Fewer than 180 days	USPFO	State AG
	Medical (USAR owned), except arms, combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USARC MSC
	Medical wholesale, except combat/ tactical vehicles, vessels, aircraft	Less than 180 days	USAMMA	Commander, USAMMA
	Other wholesale equipment (no readiness/ DAMPL impact), except combat/tactical vehicles, vessels and aircraft	1 year/1 year	AMC MSC	HQDA AMC (AMCOPS-SLA)
	Other wholesale equipment (readiness/DAMPL impact), except combat/ tactical vehicles, vessels and aircraft	1 year/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Other equipment (MACOM owned), except arms, combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation commander
	Other equipment (ARNG owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USFPO	State AG
	Other equipment (USAR owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USARC MSC
Federal law enforcement agencies (only)	Ammunition	As required	HQDA ODCS, G-4 (DALO-SMP/Supply Management Army (SMA)	ASA (ALT)
Red Cross (aid to DOD in time of war)	Administrative and general support	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Foreign governments	All equipment, except combat/ tactical vehicles, vessels and aircraft	As required, not to exceed 5 years	HQDA ODCS, G-4 (DALO-SMP)	Director, Defense Security Assistance Agency
Youth groups:				

Table 2-2
Loan or lease approval authority—Continued

Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
Boy and Girl Scouts of America (world or national jamborees); Civil Air Patrol; Camp Fire Girls, Inc.; YMCA; YWCA; Boy's Club of America; Four-H Clubs; and similar groups	MACOM owned	As required for event	Installation	Installation commander
	Wholesale	As required for event	AMC MSC	HQAMC
	USAR owned	As required for event	Installation	USARC MSC
	ARNG owned	As required for event	USFPO	State AG
Amy flying clubs	Aircraft	As negotiated	Installation	ASA (ALT), Command General (CG) FORSCOM continental United State (CONUS)
Veterans organizations	Convention assistance (furniture)	15 days/15 days	Installation	Installation commander
	Furniture (MACOM owned)	15 days/15 days	Installation	Installation commander
	Furniture (ARNG owned)	15 days/15 days	USFPO	State AG
	Burial functions (obsolete rifles)	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Aid to District of Columbia Government in combating crime	Materiel and supplies	As negotiated	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
Disaster relief: Federal Emergency Management Agency (FEMA)	Materiel and supplies	For minimum essential period	HQDA (DAMO-OD)	SECDEF
	For rehabilitation reconstruction (bridges, etc.)	For minimum essential period when requested by FEMA	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
USACE District Commander	Flood fighting equipment and supplies	For minimum essential period	USACE District	
American National Red Cross in support of local civilian Government disaster relief	Materiel and supplies	For minimum essential period	Installation	Installation commander
	USAR owned, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	Installation	USARC MSC
	ARNG-owned, except arms, combat/tactical and aircraft	For minimum essential period	USFPO	State AG
Environmental Protection Agency and U.S. Coast Guard (oil and petroleum spills)	Materiel, supplies, and equipment	For minimum essential period	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
Environmental Protection Agency and U.S. Coast Guard	Equipment/supplies, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	HQDA ODCS, G-3 (DAMO-OD)	ASD (&L)
Foreign Disaster Assistance	Equipment/supplies, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	Through Department of State to HQDA ODCS, G-3 (DAMO-OD)	ASD (International Security Affairs)

Table 2-2
Loan or lease approval authority—Continued

Requester	Category of equipment	Loan period/ extension	Action office	Approval authority
Civil Defense	Equipment/supplies, except arms, combat/ tactical vehicles, vessels and aircraft	For minimum essential period	Installation	CG, FORSCOM
Museums and Similar Activities	Historical arms, combat/ tactical vehicles, vessels and aircraft	2 year/2 year	DAMH-MD	ASA (ALT)
	Historical property other than arms, combat/tactical vehicles, vessels and aircraft	2 years/2years	DAMH-MD	Chief, CMH
	Military art	2 years/2years	DAMH-MD	Chief, CMH
Community relations and domestic action programs (Youth Conservation Corps)	Equipment for instructional purposes	As negotiated	Installation	Installation commander
	ARNG owned	As negotiated	USPFO	State AG
	USAR owned	As negotiated	Installation	USARC MSC
Authorized military health care recipients	Military	As required	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
SSF Installations	Class VII (wholesale equipment/ DAMPL impact)	1 year/1 year	AMC MSC	AMC MSC
HQDA	Class VII wholesale equipment (readiness/DAMPL impact)	1 year/1 year	AMC MSC	ODCS, G-4